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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: MCKINSEY & CO., INC.
NATIONAL PRESCRIPTION OPIATE
CONSULTANT LITIGATION

This Document Relates to:

ALL ACTIONS

Case No. 21-md-02996-CRB (SK)

**JOINT CASE MANAGEMENT
STATEMENT AND ~~PROPOSED~~
DISCOVERY SCHEDULE**

Judge: Hon. Charles R. Breyer

Courtroom: 6, 17th Floor

1 The parties to the above-captioned action jointly submit this Joint Case Management
2 Statement and [Proposed] Discovery Schedule.¹

3 **I. Cooperation**

4 The parties agree to work together to coordinate discovery to the maximum extent
5 feasible to promote the efficient and speedy resolution of this MDL, and, to that end, the
6 following discovery schedule and procedures are established.

7 **II. Responses to Complaints**

8 Pursuant to Pretrial Order No. 7, within ten days following the Court's ruling on
9 Defendants' motion to dismiss for lack of personal jurisdiction (ECF No. 313), the parties shall
10 meet and confer about a process and timetable for briefing any additional motions to dismiss
11 pursuant to FRCP 12(b) that McKinsey intends to file. Should McKinsey elect not to file any
12 additional motions to dismiss pursuant to FRCP 12(b) with respect to any of the consolidated and
13 master complaints for the NAS Children (ECF No. 298), Tribal Plaintiffs (ECF. No. 300), and
14 Third Party Payors (ECF No. 299) plaintiff groups, McKinsey shall file responses to the
15 complaints on an agreed-upon date no later than 60 days after the Court's ruling on Defendants'
16 motion to dismiss for lack of personal jurisdiction (ECF No. 313).

17 **III. Discovery**

18 a. *Service.* All discovery requests and written responses and objections may
19 be served by email; for purposes of calculating the deadline to respond, email service will be
20 treated the same as hand-delivery. Defendants shall serve discovery requests and written
21 responses and objections on Plaintiffs' Lead Counsel and/or her designee at ecabraser@lchb.com
22 and kmcnabb@lchb.com. Plaintiffs shall serve discovery requests, plaintiff fact sheets, and other
23 written discovery responses and objections on James Bernard, jbernard@stroock.com, and Josh
24 Cohen, jcohen@clarencedyer.com.

25 b. *Rule 26 Initial Disclosures.* Defendants and NAS Plaintiffs and named
26 Plaintiffs in the Third Party Payors Consolidated Class Action Complaint shall exchange Rule 26

27 _____
28 ¹ The parties intend for this order to apply to all claims filed by plaintiffs other than Subdivision
and School District Plaintiffs. If necessary, the Subdivision and School District Plaintiffs and the
Defendants will submit a Proposed Discovery Schedule at a later date.

1 initial disclosures on or before **December 6, 2022**. Discovery obligations with respect to all other
2 Plaintiffs shall be governed by the Plaintiff Fact Sheet (“PFS”) Implementation Order.

3 c. *Identification of documents and ESI*. On or before **December 13, 2022**, the
4 parties shall meet and confer pursuant to Pretrial Order No. 5 (ECF No. 259), Section IV
5 (Identification of Documents and ESI). Following this meet and confer, the parties shall set
6 interim deadlines to either reach agreement on ESI parameters or raise disputes with Magistrate
7 Judge Kim pursuant to Section IV below.

8 d. *Written Discovery*. Unless otherwise specified herein, written discovery
9 requests, and responses and objections thereto, shall be made in accordance with the Federal
10 Rules of Civil Procedure and the Local Rules of the U.S. District Court for the Northern District
11 of California.

12 i. *Responses to Plaintiffs’ First and Second Set of Requests for*
13 *Production of Documents*. On or before **December 19, 2022**,
14 Defendants shall respond to Plaintiffs’ First Set of Requests for
15 Production of Documents propounded on September 1, 2021, and
16 Plaintiffs’ Second Set of Requests for Production of Documents
17 propounded on January 26, 2022.

18 ii. *Defendants’ Requests for Production of Documents*. On or before
19 **December 19, 2022**, Defendants shall serve their First Set of
20 Requests for Production of Documents on Third Party Payors and
21 NAS Plaintiffs. Unless otherwise agreed by the parties, Plaintiffs
22 shall respond to Defendants’ Requests for Production on or before
23 **February 3, 2023**.

24 iii. *Interrogatories*. On or before **December 13, 2022**, the parties shall
25 meet and confer and submit to the Court a proposed order
26 governing appropriate limits on interrogatories. In the event the
27 parties cannot reach agreement, the parties will submit their
28

respective positions to Magistrate Judge Kim by December 20, 2022.

iv. *Plaintiff Fact Sheets*. Written discovery propounded on Tribal Plaintiffs shall be governed by the PFS Implementation Order. On or before **December 13, 2022**, the parties shall meet and confer and submit to the Court a proposed PFS and PFS Implementation Order. In the event the parties cannot reach agreement on the terms of the PFS or the corresponding Implementation Order, the parties will submit their respective proposed PFS to Magistrate Judge Kim by **December 20, 2022**. Defendants reserve the right to seek additional discovery from the Tribal Plaintiffs in addition to information and documents produced pursuant to the PFS Implementation Order.

e. Document Productions.

i. *Documents produced to the States’ Attorneys General.* On or before **December 19, 2022**, Defendants agree to begin producing to Plaintiffs all documents that Defendants produced to States’ Attorneys General pertaining to any and all opioid-related work McKinsey performed for any opioid manufacturer in the U.S., including documents that were not included in the public repository created pursuant to McKinsey’s AG settlement.

ii. *MDL 2804 Documents.* In accordance with Judge Polster’s November 18, 2021 order (ECF No. 289-1), the parties will continue to meet and confer regarding the production of documents produced in MDL 2804. On or before **December 20, 2022**, the parties shall raise any disputes with respect to the scope of or access to MDL 2804 documents with Magistrate Judge Kim pursuant to Section IV below.

1 f. *Privilege Issues.* On or before **January 19, 2023**, the parties shall submit a
2 joint proposed protocol on privilege issues pursuant to Pretrial Order No. 4 (ECF No. 258), ¶ 27.b
3 (Privileged Information). If the parties are unable to agree on the contents of such a protocol,
4 then each side shall submit its own proposed order with a memorandum (not to exceed ten pages)
5 explaining why the Court should adopt that party's proposal. Nothing in this paragraph shall
6 delay the initial production called for under Paragraph III.e.i above, and the parties are
7 specifically directed to proceed with that production in advance of the entry of an order regarding
8 a privilege protocol; provided, however, that the initial production called for under Paragraph
9 III.e.i shall be deemed to have been made pursuant to the privilege protocol order even if that
10 production precedes entry of that order.

11 g. *Depositions.* On or before **March 17, 2023** the parties will meet and
12 confer about a pre-trial order regarding deposition discovery and a protocol. The parties will
13 submit a joint proposed pre-trial order regarding depositions on or before **March 24, 2023**. If the
14 parties are unable to agree on the contents, then each shall submit its own proposal to Magistrate
15 Judge Kim with a memorandum (not to exceed five pages) explaining why the Court should adopt
16 that party's proposal.

17 h. *Supplemental Discovery Plan.* Unless otherwise agreed by the parties, on
18 or before **March 17, 2023**, the parties shall meet and confer regarding a supplemental discovery
19 plan and proposed case management order, including, as appropriate, deadlines for class
20 discovery and class certification, completion of fact discovery, including substantial completion
21 of document production, in each operative master and consolidated complaint, expert disclosure,
22 *Daubert* briefing schedules for common issues, and a bellwether protocol. Unless otherwise
23 agreed, the parties will submit a joint proposed supplemental discovery plan on or before **March**
24 **24, 2023**. If the parties are unable to agree on the contents of such order(s), then each shall
25 submit its own proposal with a memorandum (not to exceed ten pages) explaining why the Court
26 should adopt that party's proposal.

1 **IV. Discovery Dispute Resolution.**

2 Discovery disputes will be raised with Magistrate Judge Kim, and shall be resolved
3 consistent with Judge Kim's Standing Order regarding civil discovery.

4 **IT IS SO STIPULATED.**

5
6 Dated: October 26, 2022

By: /s/

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15 *Plaintiffs' Lead Counsel and on behalf of the*
16 *Plaintiffs' Steering Committee*

17 By: /s/

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24 *Attorney for Defendants*


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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & ~~PROPOSED~~ ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

DATED: October 27, 2022



CHARLES R. BREYER
United States District Judge